**COMMISSION FOR MENTAL HEALTH,
DEVELOPMENTAL DISABILITIES AND
SUBSTANCE ABUSE SERVICES**

Commission Minutes

**Clarion Hotel
320 Hillsborough Street
Raleigh, NC 27603**

Thursday, May 27, 2010

Attending:
Jerry Ratley Jennifer Brobst, Elizabeth MacMichael, Dr. Greg Olley, John Owen, Pamela Poteat, Don Trobaugh, Dr. John Carbone, Debra Dihoff, Sandra DuPuy, Matthew Harbin, Phillip Mooring, Larry Pittman, Dr. James W. Finch, A. Joseph Kaiser, Dr. Ranota Hall, Emily Moore, Nancy Moore, Dr. Richard Brunstetter, Elizabeth Ramos

Excused Members: John R. Corne, Dr. Diana Antonacci, Beverly Morrow, Carl Higginbotham, David R. Turpin

Division Staff:
Leza Wainwright, J. Luckey Welsh, Steven E. Hairston, W. Denise Baker, Amanda J. Reeder, Andrea Borden, Jason Reynolds, Jim Jarrard, Bill Harris, Martha Lamb, Michelle Edelen, Sonya Brown

Others:
Michelle Elliott, Katie Tise, Paula Cox Fishman, Martha Brock, Elizabeth Edwards, Louise Fisher, Sarah Tackett, M. Withrow, Betty Gardner, Susan Pollitt, Melynn Glusman, Rodney Crooms, Elizabeth Albiston

Handouts:
1. Selected Budget Comparison (DMH/DD/SAS Director's Report)
2. Request for Waiver of Rule 10A NCAC 27G .0606
3. Request for Waiver of Rule 10A NCAC 27G .3806

Call to Order:
Jerry Ratley, Chair, Rules Committee, convened the meeting in Mr. Corne's stead. Mr. Ratley, called the meeting to order at 9:00 am and requested a moment of reflection. He then asked all present to introduce themselves. Mr. Ratley read the Ethics Reminder and asked if any member had a conflict of interest or appearance of conflict with respect to any matters that were coming before the Commission at the meeting. There were none.

Mr. Ratley also reviewed the Governor's Executive Order No. 34 as it related to ethics and attendance requirements for gubernatorial appointees to boards and commissions. Mr. Ratley reminded the Commission members that there is a method for reporting absences, and asked the members to comply with the procedure. Mr. Ratley informed the Commission that the meeting agenda had been revised, and Rules 10A NCAC Subchapter 26D, would not be reviewed at today's meeting. Instead, the rules will be submitted to the Commission after the Rules Committee completed its review of the rules in their entirety.

Approval of Minutes

Upon motion, second and unanimous vote, the Commission approved the minutes of the February 25, 2010 meeting.

J. Luckey Welsh, Director, NC Division of State Operated Healthcare Facilities (DSOHF), provided an overview of the state facilities. He addressed the following:

- The R.J. Blackley Alcohol and Drug Abuse Treatment Center (ADATC), located in Butner has a new Director, Lisa Haire.

- Walter B. Jones, an ADATC located in Greenville, began a pilot program related to smoking cessation, as approved by the Commission. Mr. Welsh reported that the program is going very well and has been accepted by the staff and patients. Originally, DSOHF thought that there might be a decrease in admission due to the no smoking policy; however, as of the meeting, that has not been the case.

- The developmental centers continue to provide wonderful service to the people and citizens of the state. Murdoch Center Children's Crisis Respite – Therapeutic Respite Addressing Crisis for Kids (TRACK) opened May 25, 2010 with a capacity of two to three beds and will be at full capacity of six beds in mid-June. The purpose of the program is to divert children and adolescents, ages 5-17, with intellectual/developmental disabilities and/or autism who are in behavioral crisis from the state psychiatric hospitals and emergency departments after appropriate community-based crisis services have been exhausted.

- Broughton Hospital has filed its application for accreditation by the Joint Commission; Broughton should receive a survey from the Joint Commission in 90 days. DSOHF is planning a new building on the campus of the Broughton Hospital. Construction should start in 2011 and be completed by 2013.

- Dorothea Dix is now a stand alone hospital with its own provider number, separate and distinct from Central Regional Hospital. The Psychiatric Residential Treatment Facility (PRTF) located on the campus of Dorothea Dix will close by the end of June.

- Central Regional Hospital (CRH) is now a stand alone facility with its own provider number. CRH recently had a full survey, conducted by four surveyors for five days and the survey cited no deficiencies.

- The Whitaker School will be converted to a PRTF.

- Cherry Hospital recently underwent its three year survey by the Joint Commission. Cherry Hospital is fully accredited; only minor deficiencies were noted. DSOHF plans to construct a new Cherry Hospital fairly soon.

- DSHOF has noted a delay of admissions to state facilities from hospital Emergency Rooms (ER) throughout the state of North Carolina. Mr. Welsh suggested that in the cases where inmates are being involuntarily committed to a facility, it would be best for magistrates to use crisis teams, rather than ordering the consumer into a facility.

Elizabeth MacMichael, Commission member, inquired if the use of the TRACK program has demonstrated a quick turn around on the paperwork between the Local Management Entities (LMEs) and Murdoch. Leza Wainwright, Director, NC Division of Mental Health, Developmental Disabilities and Substance Abuse Services (NC DMH/DD/SAS), indicated that the staff could check on it.

Cindy Ehlers, Commission member, asked if DSOHF saw any impact on a state-wide basis around discharge planning and recidivism as LMEs have had less money to work with this year. Mr. Welsh stated that he was not aware of any major problems, adding that the facilities are required to complete discharge plans for consumers. Mr. Welsh further stated that DSOHF tracks the recidivism rate and does not think that there had been a peak in this area.

Ms. Wainwright commented on the anticipated challenges of residency issues given that Medicaid eligibility will no longer be restricted to the county of approval. She added that with the increasingly transient nature of society, LME's will likely be placed in the unenviable position of meeting a greater need than funding permits.

Thomas Gettelman, Commission member, stated that community hospitals do not always have the expertise and the ability to manage some of the higher need patients that they could otherwise manage due to training needs and other issues. Dr. Gettelman suggested that state facilities providing that training offer training courses to staff of community hospitals if space is available. Dr. Gettelman stated this would allow the community hospital staff members to access the training, and could pay for the training to offset any additional cost. He stated this would be an avenue to allow community hospitals to access the same excellent training provided to the state hospitals. Mr. Welsh stated that DSOHF would look into the possibility; he added that the training is proprietary.

Mr. Ratley, on behalf of Chairman Corne and the Commission, expressed gratitude to Ms. Wainwright for the service and dedication she has shown throughout her career. The Commission also thanked her for coming to the meetings and responding to every question that was asked in a very professional manner. The Commission applauded Ms. Wainwright for her years of service to the mh/dd/sa service community and wished her a happy retirement.

Director's Report

Ms. Wainwright started by giving an update on the 2010 budget. Ms. Wainwright handed out a summary sheet, showing a comparison between Governor Perdue's recommendations, along with what the Senate has already passed in its budget and the preliminary recommendations from the House of Representatives. Ms. Wainwright briefly reviewed the budget and comparison sheet with the Commission.

Ms. Wainwright provided an update on Critical Access Behavioral Health Agencies (CABHA), (i.e., the new comprehensive service providers). Ms. Wainwright stated that this process is going amazingly well. As of Monday, May 24, 2010, 110 provider organizations passed the desk review, which is the first step in becoming a CABHA. Ms. Wainwright stated that the Division has been concerned about the impact of CABHA upon small provider agencies since the discussion of CABHAs began. She stated that out of the 110 providers who have passed the desk review, approximately one third of them carry an average caseload of less than 100 consumers. Ms. Wainwright stated that the earlier concern that the only providers that would achieve

CABHA status were large providers did not seem to be the case, as many small provider agencies were successfully passing the desk review. Ms. Wainwright stated that thus far, 70 providers have been given the green light for local verification reviews; of those, 40 providers have already gone to local verification review, and all but 14 passed. Ms. Wainwright added that of the 12 providers with whom the Division has conducted clinical interviews, which is the last step in the process, all 12 have passed. Ms. Wainwright added that a provider who does not pass the desk review the first time can apply again if they rectify the situation that caused the failure.
Following the Director's Report, Ms. Wainwright received the following questions and comments from the Commission:

Debra Dihoff, Commission member, asked about the geographic location of CABHAs, and inquired if they would be accessible to consumers. Ms. Wainwright responded that currently, the Division has not mapped the 110 providers who have passed the desk review; however, the Division did map the providers when 75 provider organizations passed the desk review. Ms. Wainwright reported that the geographical distribution at that time looked very good.

Ms. Dihoff also asked if the Division has determined the impact of the changes to Community Support Team (CST) services. Ms. Wainwright stated that they have heard from providers that the changes in CST made by the General Assembly may make this service no longer financially viable. Ms. Wainwright explained that CST is a three person team service. One may assume that the average employee works 1800 hours a year, and an employee working 40 hours a week for one year would work 2080 hours. The team may serve up to 45 people at five hours per person, meaning that more hours of service may be authorized than that team could physically deliver, which could be problematic. The Division is trying to work with provider agencies to see what the Division could do to amend the changes that are proposed to make them more reasonable.

Matthew Harbin, Commission member, asked if the 110 providers that passed the desk review were authorized to provide services. Ms. Wainwright responded that they were not at this time, adding that passing the desk review meant that they had passed the first step of the CABHA process. Mr. Harbin asked if the Division had an estimate regarding how many provider agencies will pass and be processed through the CABHA process by July 1, 2010. Ms. Wainwright responded that she thinks they will have about 75 by July 1, 2010.

Dr. James Finch, Commission member, stated that he was not sure what to make of the one third of 110 provider agencies having less than 100 clients. Dr. Finch stated that this could potentially mean 1,000 – 2,000 clients total. Dr. Finch asked Ms. Wainwright if she had a sense of what percentage of clients were being treated through smaller agencies before the implementation of CABHA and what percentage are going to be treated by smaller agencies after the process has been completed. Ms. Wainwright responded that prior to implementing this change, the majority of consumers were served by larger agencies, but there were many small agencies serving few consumers each. Ms. Wainwright responded that, traditionally, the majority of consumers have been served by larger agencies. Ms. Wainwright further responded that she did not know how much of the total population currently being served is represented by the 110 providers who have passed the desk review; however, it is a fairly high proportion, as the larger agencies have always served more people.

Larry Pittman, Commission member, asked if the Division anticipates that the 1915(b)(c) Medicaid Waiver will expand across the state. Ms. Wainwright stated that it is unclear at this point. The Division wanted to expand the program to one or two more LMEs to ensure they could replicate the success that Piedmont Behavioral Health (PBH) has had under the waiver.

Mr. Pittman asked if the agencies who had not yet applied for CABHA status would lose the opportunity to apply. Ms. Wainwright responded that this will not occur so long as the state operates under the Medicaid state plan, which requires the network to be open to any willing and qualified provider. Ms. Wainwright further stated that if the waiver goes statewide, then the LMEs would have the ability to limit the provider network.

Dr. Gettleman asked about the cost savings with the ValueOptions contract and the waivers. Ms. Wainwright responded that ValueOptions conducts utilization reviews for consumers. Ms. Wainwright stated that an LME that is operating under a waiver would assume responsibility for utilization review, as well as assume additional responsibilities as required by the Centers for Medicare & Medicaid Services (CMS) as a managed care entity. Ms. Wainwright added that the utilization review contract is up for bid again this year, and the Division anticipates that there will be a request for proposals within the next week. The new contract will be fairly significantly reduced relative to costs ValueOptions has been paid.

Elizabeth Ramos, Commission member, asked if a provider agency had to be nationally accredited or certified to be a CABHA. Ms. Wainwright responded in the affirmative, and added that currently, in order to be endorsed to provide most services, providers have to be accredited. When the enhanced service package became effective during 2006, it required that within three years of enrollment in the Medicaid program, any provider delivering those services had to achieve a national accreditation. The General Assembly passed a law two years ago that stated that providers must become accredited in either one or three years, depending upon the date the provider enrolled in Medicaid. The difference in the CABHA process is that it requires the provider to have achieved a three year accreditation, rather than a one year accreditation.

Request for Waiver of Rule 10A NCAC 27I .0606

Ms. Wainwright discussed a request of the Commission to waive Rule 10A NCAC 27I .0606. Ms. Wainwright stated that the waiver was initially granted by the Commission at the November 19, 2009 meeting. This rule relates to the Non-Medicaid Appeal process and was written pursuant to the Commission's statutory authority. The Division's request was to continue the waiver of Rule 10A NCAC 27I .0606 to allow the Division to convene the non-Medicaid consumer hearing with the Division's Hearing Officer in lieu of the full Panel.

Ms. Wainwright responded to the following issues and comments regarding the waiver request:

- The nature of appeals received – clinical decisions based upon medical necessity criteria or administrative decisions based solely upon the lack of available funding – nearly all appeals stem from LME decisions related to lack of available funding.
- The difficulty securing panel member participation for each appeal request filed – the Non-Medicaid Appeals Panel is not a sitting panel; a separate panel of volunteer participants must be convened for each appeal filed.
- The statutory basis of appeals as well as the rules governing their implementation and whether those appeals based solely upon LME funding decisions could be denied.
- The use of a Hearing Officer in lieu of a panel.
- The implication and impact should the Commission approve or deny the waiver request.
- The frustration experienced by panel members and consumer appellants in realizing that the Non-Medicaid Appeals Panel cannot order the LME to provide services where there is no funding available to provide them.
- The fact that there is no entitlement to state-funded services.

Ms. Wainwright noted that there are two options: amending the rules and/or amending the statute. Amending the statute would require action by the General Assembly.

After a great deal of discussion, the Commission entertained the following motion: To approve the waiver request for one year with a staff and Commission member workgroup working on proposed language to amend the rules and to report back to the Rules Committee meeting in July.

Upon motion and second, and majority vote, the Commission approved the extension of the waiver request for Rule 10A NCAC 27I .0606, "Hearing Schedule and Composition of Panel", for 12 months, with a commitment from staff to report back to the Rules Committee meeting in July with proposed changes to Rules 10A NCAC 27I .0600 .

Request of Waiver of Rule 10A NCAC 27G .3806

Jason Reynolds, Community Policy Management, NC Division of MH/DD/SAS, gave the presentation on the Division's request for a waiver of Rule 10A NCAC 27G .3806 – Authorization: Facilities Providing Substance Abuse Services to DWI Offenders.

Pursuant to Rule 10A NCAC 27G .3806(c), applicant facilities must submit an application and supporting documents to the Division for review. Per rule, the Division must issue a decision to the facility within 20 business day of receipt of its application. Mr. Reynolds informed the Commission that the application is 14 pages in length and must be accompanied by additional documents, including a procedural manual, samples of clinical documents and other materials sufficient to verify compliance with DWI Services statute and administrative rules. The Division requested a waiver of Rule 10A NCAC 27G .3806 to allow additional time to process and render a decision in each application. In lieu of the 20 business days currently required, the Division sought to extend the review period to 90 calendar days following receipt of the application to review it. The Division also requested that the waiver be retroactive to March 1, 2010 and remain in effect through September 30, 2010.

Mr. Trobaugh stated that this situation is unlikely to get any better and suggested changing the rule to 90 days. Mr. Reynolds stated that the Commission recently approved DWI Rules to go forward to public comment at the February 25, 2010 meeting. Mr. Reynolds added that the Division needed the waiver request in place while the 10A NCAC 27G .3800 Rules are being processed through the system.

Pamela Poteat, Commission member, asked if the March 1, 2010 date represented the oldest applications that have been received by the Division that have not been finalized. Mr. Reynolds stated that the Division felt that this date would be a reasonable time period to ensure that the Division has captured all outstanding applications.

Mr. Pittman stated that, as a provider of substance abuse services, he recused himself from any discussion or vote.

Upon motion and second, and majority vote, the Commission approved the waiver request for 10A NCAC 27G .3806, "Authorization: Facilities Providing Substance Abuse Services to DWI Offenders."

Proposed Adoption of 10A NCAC 27E .0301 - .0304 – NCI Quality Assurance Committee

Steven E. Hairston, Chief, Operations Support Section, DMH/DD/SAS, gave the presentation on the proposed adoption of Rules 10A NCAC 27E .0301 -.0304. The proposed rules set forth

regulations for governing the NCI Quality Assurance (QA) Committee, including its purpose, duties and composition. The Commission has rulemaking authority for these rules pursuant to G.S. §143B-147(a)(1)(b). The rules were presented to the full Commission for final adoption. Mr. Hairston reviewed the comment grid and informed the Commission of the changes that were incorporated into the rule from the presentation to the Rules Committee.

John Owen, Commission member, stated that he had a conflict of interest on the rule due to his direct involvement with the NCI QA Committee and recused himself from the vote.

Ms. Poteat inquired about the meaning of the term "certain populations" in Rule 10A NCAC 27E .0302(9). Mr. Hairston responded that the term "certain populations" refers to special populations. Mr. Hairston gave the example of an individual who is small framed; in that instance, one wouldn't want to use a technique typically used on a larger person.

Upon motion and second, and majority vote, the Commission approved the proposed adoption of 10A NCAC 27E .0301 - .0304, NCI Quality Assurance Committee for final adoption to be forwarded to the Rules Review Commission.

Advisory Committee Report

Larry Pittman, Chairman of the Advisory Committee, presented a report the Commission of the Advisory Committee's April 21, 2010 meeting. Mr. Pittman stated that the Advisory Committee has been charged by the Commission to identify a priority list for the committee to work on and submit its findings to the Commission. Mr. Pittman stated that two LMEs sent representatives to speak about the impact that CABHA has had at the local level regarding both LMEs and service delivery.

The following are the three priority areas that the Advisory Committee has identified: 1) Workforce Development; 2) CABHA and how that affects other services that had been provided; and 3) Traumatic Brain Injury, with a focus on how it applies to mental health and substance abuse in veterans. Mr. Pittman asked the Commission to vote to approve the priority areas.

Jennifer Brobst, Commission member, asked if non-Commission members would be able to join the subcommittees dealing with the priority areas. Mr. Pittman responded that he was unsure, but would not be opposed to outside consultation.

Mr. Owen abstained from the vote due to his absence at the April 21, 2010 Advisory Committee meeting.

Upon motion, second and unanimous vote, the Commission approved the three priority areas to be worked on by the Advisory Committee.

Rules Committee Report

Jerry Ratley, Chairman of the Rules Committee, presented the Commission with the report from the April 21 and May 6, 2010 Rules Committee meetings. Mr. Ratley stated the committee had reviewed and recommended to the Commission the NCI Quality Assurance Committee Rules. In addition, the committee met both April 21 and May 6, 2010 to discuss 10A NCAC 26D .0103 - .0906, part of the "Prison Rules" under revision. Mr. Ratley stated that the Rules Committee would be meeting after the Commission adjourned, and hoped to finish review of the Prison Rules in July.

Public Comment

Elizabeth Edwards, Disability Rights North Carolina ("DRNC") addressed the Commission with comments regarding the waiver request of Rule 10A NCAC 27I .0606. Ms. Edwards asked that a short period of public comment be allowed before the waivers come up for discussion and vote by the Commission. Ms. Edwards pointed out that this process was created after a very long effort by the disability advocacy community. These rules were created to protect the rights that were being overlooked and create accountability in the system. Ms. Edwards further stated that the opportunity for the consumers to be heard is important and that the information that is obtained from the appeals is getting back to the state, LMEs and representatives. Ms. Edwards stated that the panel is important because of the participation from consumers.

Ms. Baker asked how DRNC decides which cases it will accept to represent a consumer at the non-Medicaid appeals. Ms. Baker stated that she asked this question because several consumers told Division staff that they contacted DRNC for assistance and were told that assistance was not available. Ms. Edwards responded that DRNC has limited funds and they have targets for several issues that are set by the board with public input. Ms. Edwards stated that they may not have the capacity to assist the consumers in those hearings, as they cover the entire state of North Carolina with 15 attorneys and advocates.

Margo Withrow, a Registered Nurse and consumer, commented on PIC training. Ms. Withrow stated that when using the PIC method, you have allowed that situation with the patient to escalate to the point where it is out of control. Ms. Withrow stated that she has been on both sides of the mental health system and that she has been hospitalized at two state facilities. Ms. Withrow stated that the use of seclusion and restraints can injure patients and that there is more to consider than just a person's physical frame in the use of seclusion and restraint.

Mr. Hairston stated for the record that Martha Brock of NC Mental Hope had to leave early and left comments for the Commission to review.

There being no further business the meeting adjourned at 2:15 pm.